

EXHIBIT "1"

1 LAURENCE F. PULGRAM (CA State Bar No. 115163) (*pro hac vice*)
2 lpulgram@fenwick.com
3 CLIFFORD C. WEBB (CA State Bar No. 260885) (*pro hac vice*)
4 cwebb@fenwick.com
5 FENWICK & WEST LLP
6 555 California Street, 12th Floor
7 San Francisco, California 94104
8 Telephone: (415) 875-2300
9 Facsimile: (415) 281-1350

6 KURT OPSAHL (CA State Bar No. 191303) (*pro hac vice*)
7 kurt@eff.org
8 CORYNNE MCSHERRY (CA State Bar No. 221504) (*pro hac vice*)
9 corynne@eff.org
10 ELECTRONIC FRONTIER FOUNDATION
11 454 Shotwell Street
12 San Francisco, California 94110
13 Telephone: (415) 436-9333
14 Facsimile: (415) 436-9993

11 CHAD BOWERS (NV State Bar No. 7283)
12 bowers@lawyer.com
13 CHAD A. BOWERS, LTD
14 3202 West Charleston Boulevard
15 Las Vegas, Nevada 89102
16 Telephone: (702) 457-1001
17 Attorneys for Defendant and Counterclaimant
18 DEMOCRATIC UNDERGROUND, LLC, and
19 Defendant DAVID ALLEN

16 UNITED STATES DISTRICT COURT
17 FOR THE DISTRICT OF NEVADA

18 RIGHTHAVEN LLC, a Nevada limited liability company,)
19 Plaintiff,)
20 v.)

Case No. 2:10-cv-01356-RLH
(RJJ)

21 DEMOCRATIC UNDERGROUND, LLC, a District of)
22 Columbia limited-liability company; and DAVID ALLEN,)
23 an individual,)
24 Defendants.)

**DEFENDANTS' INITIAL
DISCLOSURES**

23 DEMOCRATIC UNDERGROUND, LLC, a District of)
24 Columbia limited-liability company,)
25 Counterclaimant,)
26 v.)
27 RIGHTHAVEN LLC, a Nevada limited liability company,)
28 and STEPHENS MEDIA LLC, a Nevada limited-liability)
company,)
Counterdefendants.)

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Defendant and Counterclaimant Democratic Underground LLC (“Democratic Underground”) and Defendant David Allen (collectively “Disclosing Parties” or “Defendants”) hereby make the following initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) to Plaintiff and Counterdefendant Righthaven LLC (“Righthaven”) and Counterdefendant Stephens Media LLC (“Stephens Media”). Because the Disclosing Parties’ investigation and discovery in this matter are ongoing, they reserve the right to supplement and amend this disclosure pursuant to Rule 26(e), to produce additional information acquired during the course of discovery, and to rely on such additional information as evidence in this action. These disclosures are made without waiver of, or prejudice to, any objection the Disclosing Parties may have to the use at trial of any of the information disclosed in this document, this document itself, or any document or thing produced pursuant to Rule 26.

A. Persons Disclosed Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i).

| [REDACTED] | | |
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| David Allen, principal, Democratic Underground | c/o Defendants’ counsel of record in this action | Fair use of the accused Excerpt; Defendants’ lack of a volitional act of infringement; failure to give notice of alleged infringement; circumstances of posting of accused Excerpt and other materials on Democratic Underground website. |
| Brian Leitner, Systems Administrator, Democratic Underground | c/o Defendants’ counsel of record in this action | Fair use of the accused Excerpt; Defendants’ lack of a volitional act of infringement; failure to give notice of alleged infringement; circumstances of posting of accused Excerpt and other materials on Democratic Underground website. |

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| <p>Steven A. Gibson, CEO, Righthaven</p> | <p><i>On information and belief:</i> 9960 West Cheyenne Ave., Suite 210, Las Vegas, NV 89129</p> | <p>Fair use of the accused Excerpt; the creation, purpose, and practices of Righthaven; relationship of Stephens Media and Righthaven; Stephens Media's and Righthaven's lack of harm from use of the accused Excerpt; Stephens Media's and Righthaven's failure to mitigate damages; Stephens Media's and Righthaven's copyright misuse; Stephens Media's and Righthaven's fraud on the Copyright Office and sham assignment; Stephens Media's and Righthaven's barratry, champerty, and maintenance; license and estoppel regarding the accused Excerpt.</p> |
| <p>J. Charles Coons, in-house attorney, Righthaven</p> | <p><i>On information and belief:</i> 9960 West Cheyenne Ave., Suite 210, Las Vegas, NV 89129</p> | <p>Fair use of the accused Excerpt; the creation, purpose, and practices of Righthaven; relationship of Stephens Media and Righthaven; Stephens Media's and Righthaven's lack of harm from use of the accused Excerpt; Stephens Media's and Righthaven's failure to mitigate damages; Stephens Media's and Righthaven's copyright misuse; Stephens Media's and Righthaven's fraud on the Copyright Office and sham assignment; Stephens Media's and Righthaven's barratry, champerty, and maintenance; license and estoppel regarding the accused Excerpt.</p> |
| <p>Joseph C. Chu, in-house attorney, Righthaven</p> | <p><i>On information and belief:</i> 9960 West Cheyenne Ave., Suite 210, Las Vegas, NV 89129</p> | <p>Fair use of the accused Excerpt; the creation, purpose, and practices of Righthaven; relationship of Stephens Media and Righthaven; Stephens Media's and Righthaven's lack of harm from use of the accused Excerpt; Stephens Media's and Righthaven's failure to mitigate damages; Stephens Media's and Righthaven's copyright misuse; Stephens Media's and Righthaven's fraud on the Copyright Office and sham assignment; Stephens Media's and Righthaven's barratry, champerty, and maintenance; license and estoppel regarding the accused Excerpt.</p> |

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| <p>Carlyn Dilger, paralegal, Righthaven</p> | <p><i>On information and belief:</i> 9960 West Cheyenne Ave., Suite 210, Las Vegas, NV 89129</p> | <p>Fair use of the accused Excerpt; the creation, purpose, and practices of Righthaven; relationship of Stephens Media and Righthaven; Stephens Media's and Righthaven's lack of harm from use of the accused Excerpt; Stephens Media's and Righthaven's failure to mitigate damages; Stephens Media's and Righthaven's copyright misuse; Stephens Media's and Righthaven's fraud on the Copyright Office and sham assignment; Stephens Media's and Righthaven's barratry, champerty, and maintenance; license and estoppel regarding the accused Excerpt.</p> |
| <p>R. Gibson, employee, Righthaven</p> | <p><i>On information and belief:</i> 9960 West Cheyenne Ave., Suite 210, Las Vegas, NV 89129</p> | <p>Fair use of the accused Excerpt; the creation, purpose, and practices of Righthaven; relationship of Stephens Media and Righthaven; Stephens Media's and Righthaven's lack of harm from use of the accused Excerpt; Stephens Media's and Righthaven's failure to mitigate damages; Stephens Media's and Righthaven's copyright misuse; Stephens Media's and Righthaven's fraud on the Copyright Office and sham assignment; Stephens Media's and Righthaven's barratry, champerty, and maintenance; license and estoppel regarding the accused Excerpt.</p> |
| <p>S. Ganim, employee, Righthaven</p> | <p><i>On information and belief:</i> 9960 West Cheyenne Ave., Suite 210, Las Vegas, NV 89129</p> | <p>Fair use of the accused Excerpt; the creation, purpose, and practices of Righthaven; relationship of Stephens Media and Righthaven; Stephens Media's and Righthaven's lack of harm from use of the accused Excerpt; Stephens Media's and Righthaven's failure to mitigate damages; Stephens Media's and Righthaven's copyright misuse; Stephens Media's and Righthaven's fraud on the Copyright Office and sham assignment; Stephens Media's and Righthaven's barratry, champerty, and maintenance; license and estoppel regarding the accused Excerpt.</p> |

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| <p>Sherman Frederick, Former CEO, Stephens Media, LVRJ columnist</p> | <p><i>On information and belief:</i> c/o Las Vegas Review- Journal/Stephens Media, 1111 W. Bonanza Rd., P.O. Box 70, Las Vegas, NV 89125</p> | <p>Stephens Media's licensing (express or implied), consent, waiver, and acquiescence to use of the accused Excerpt; Estoppel of Stephens Media or Righthaven to assert any claim for infringement; Fair use of the accused Excerpt; Stephens Media's and Righthaven's lack of harm from use of accused Excerpt; Stephens Media's and Righthaven's failure to mitigate; Stephens Media's and Righthaven's copyright misuse; Stephens Media's and Righthaven's fraud on the Copyright Office and sham assignment; the formation of, purpose of, and practices of Righthaven; the relationship between Stephens Media and Righthaven; Stephens Media's and Righthaven's barratry, champerty, and maintenance.</p> |
| <p>Mark Hinueber, General Counsel, Stephens Media</p> | <p><i>On information and belief:</i> c/o Stephens Media, 1111 W. Bonanza Rd., P.O. Box 70, Las Vegas, NV 89125</p> | <p>Stephens Media's licensing (express or implied), consent, waiver, and acquiescence to use of the accused Excerpt; Estoppel of Stephens Media or Righthaven to assert any claim for infringement; Fair use of the accused Excerpt; Stephens Media's and Righthaven's lack of harm from use of accused Excerpt; Stephens Media's and Righthaven's failure to mitigate; Stephens Media's and Righthaven's copyright misuse; Stephens Media's and Righthaven's fraud on the Copyright Office and sham assignment; the formation of, purpose of, and practices of Righthaven; the relationship between Stephens Media and Righthaven; Stephens Media's and Righthaven's barratry, champerty, and maintenance.</p> |

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| <p>Thomas Mitchell, LVRJ editor</p> | <p><i>On information and belief:</i> c/o Las Vegas Review-Journal, 1111 W. Bonanza Rd., P.O. Box 70, Las Vegas, NV 89125</p> | <p>Stephens Media's licensing (express or implied), consent, waiver, and acquiescence to use of the accused Excerpt; Estoppel of Stephens Media and Righthaven to assert any claim for infringement; Fair use of the accused Excerpt; Stephens Media's and Righthaven's lack of harm from use of the accused Excerpt; Stephens Media's and Righthaven's failure to mitigate; Stephens Media's and Righthaven's copyright misuse; Stephens Media's and Righthaven's fraud on the Copyright Office and sham assignment; Stephens Media's and Righthaven's barratry, champerty, and maintenance.</p> |
| <p>Tonya Carpenter, LVRJ Director of Content Development</p> | <p><i>On information and belief:</i> c/o Las Vegas Review-Journal, 1111 W. Bonanza Rd., P.O. Box 70, Las Vegas, NV 89125</p> | <p>Stephens Media's licensing (express or implied), consent, waiver, and acquiescence to use of the accused Excerpt; Estoppel of Stephens Media and Righthaven to assert any claim for infringement; Fair use of the accused Excerpt; Stephens Media's and Righthaven's lack of harm from use of the accused Excerpt; Stephens Media's and Righthaven's failure to mitigate; Stephens Media's and Righthaven's copyright misuse; Stephens Media's and Righthaven's fraud on the Copyright Office and sham assignment; Stephens Media's and Righthaven's barratry, champerty, and maintenance.</p> |
| <p>Laura Myers, author of News Article</p> | <p><i>On information and belief:</i> c/o Las Vegas Review-Journal, 1111 W. Bonanza Rd., P.O. Box 70, Las Vegas, NV 89125</p> | <p>Stephens Media's licensing (express or implied), consent, waiver, and acquiescence to use of the accused Excerpt; Estoppel of Stephens Media and Righthaven to assert any claim for infringement; Fair use of the accused Excerpt; Stephens Media's and Righthaven's lack of harm from use of the accused Excerpt; Stephens Media's and Righthaven's failure to mitigate; Stephens Media's and Righthaven's copyright misuse; Stephens Media's and Righthaven's fraud on the Copyright Office and sham assignment; Stephens Media's and Righthaven's barratry, champerty, and maintenance.</p> |

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| Paul Smith, President WEHCO Newspapers, Inc. | <i>On information and belief:</i> c/o WEHCO Media 115 East Capitol Ave. Little Rock, AR 72201 | Stephens Media's and Righthaven's barratry, champerty, and maintenance; the relationship between Stephens Media and Righthaven. |
| Jackson Farrow, Jr., incorporator of SI Content Monitor LLC | Address Unknown | Stephens Media's and Righthaven's barratry, champerty, and maintenance; Stephens Media's and Righthaven's failure to mitigate damages; the relationship between Stephens Media and Righthaven. |
| Unknown persons at SI Content Monitor LLC | Address Unknown | Stephens Media's and Righthaven's barratry, champerty, and maintenance; Stephens Media's and Righthaven's failure to mitigate damages; the relationship between Stephens Media and Righthaven. |
| Unknown persons at Net Sortie LLC | Address Unknown | Stephens Media's and Righthaven's barratry, champerty, and maintenance; Stephens Media's and Righthaven's failure to mitigate damages; the relationship between Stephens Media and Righthaven. |

B. Documents to Be Disclosed Pursuant to Fed. R. Civ. Pro. 26(a)(1)(A)(ii).

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| Documents showing the number of visits to the accused Excerpt on the Democratic Underground website | Democratic Underground |
| Documents relating to advertising and associated revenue from the Democratic Underground website | Democratic Underground |
| Democratic Underground's copyright policies | Democratic Underground |
| Documents attached to Democratic Underground's Counterclaim (Dkt. 13) | Publicly available |
| Documents reflecting the creation, ownership, and management of Righthaven and its control by and relationship to Stephens Media | Publicly available; Righthaven; Stephens Media |

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| Communications between Righthaven and Stephens Media regarding (i) the accused Excerpt and (ii) related works | Righthaven; Stephens Media |
| Documents relating to Righthaven's and its agents' efforts to procure copyright registrations, assignments, and rights to pursue claims for alleged copyright infringements | Righthaven; Stephens Media; Copyright Office; agents of Righthaven |
| Documents reflecting Righthaven's and Stephens Media's lack of injury from the alleged infringement, including without limitations logs of page views, logs and data regarding sources of page views, logs and data regarding advertising revenues, internal analyses, marketing and sales documents, policies regarding copying of materials and blog entries, and logs of utilization of website features (such as sharing, printing, emailing, etc.) | Righthaven; Stephens Media |
| Righthaven's business plans, marketing plans, and implementation plans and communications with Stephens Media related thereto | Righthaven; Stephens Media |
| Public statements regarding the relationship between Righthaven and Stephens Media | Publicly available; Righthaven; Stephens Media |

The Disclosing Parties are continuing their factual investigation into the matters alleged in the Complaint (Dkt. 1) and Counterclaim (Dkt. 13) and reserve their rights to identify additional categories of documents as their investigation continues. The Disclosing Parties will produce discoverable, non-privileged documents and things in their possession, custody, or control for inspection and copying pursuant to a proper inspection demand. To the extent that any such documents or things contain sensitive, confidential, proprietary, and/or trade secret information, the Disclosing Parties will produce only subject to an appropriate protective order. Nothing in this initial disclosure is a representation that any particular document or thing is relevant to any issue in this action or that any particular document or thing exists or is in the Disclosing Parties' possession, custody, or control.

C. Documents to Be Disclosed Pursuant to Fed. R. Civ. Pro. 26(a)(1)(A)(iii).

The Disclosing Parties do not currently seek damages. The relief sought by Counterclaimant Democratic Underground is set forth in the Counterclaim filed on September 27,

1 2010 (Dkt. 13).

2 **D. Documents to Be Disclosed Pursuant to Fed. R. Civ. Pro. 26(a)(1)(A)(iv).**

3 While they continue their investigation, the Disclosing Parties are not currently
4 aware of any applicable insurance agreements.

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6 Dated: December 15, 2010

FENWICK & WEST LLP

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By: /s/ Laurence F. Pulgram

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Laurence F. Pulgram

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Attorneys for Defendant and
Counterclaimant DEMOCRATIC
UNDERGROUND, LLC, and
Defendant DAVID ALLEN

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FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO